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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Calling Party Pays Service Option in the Com- )  
mercial Mobile Radio Services )

WT Docket No. 97-207

To: The Commission

### REPLY COMMENTS OF BELLSOUTH

BellSouth Corporation ("BellSouth"), by its attorneys, hereby replies to those comments submitted in response to the "Petition for Expedited Consideration" filed by the Cellular Telecommunications Industry Association ("CTIA") on February 23, 1998 ("CTIA Petition").<sup>1</sup> CTIA has not shown, and the comments do not provide, any compelling need for the Commission to initiate a rulemaking regarding CPP. Despite CTIA's contentions to the contrary, the comments in response to the petition and the *Notice of Inquiry*<sup>2</sup> reflect deep divisions regarding the need for federal regulatory intervention in the CPP arena. The marketplace — not heavy-handed regulation — should guide CPP's domestic development. Accordingly, the Commission should decline to initiate a rulemaking to regulate CPP and deny CTIA's petition.

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<sup>1</sup> See *Public Notice*, "Commission Seeks Comments on 'Petition for Expedited Consideration of the Cellular Telecommunications Industry Association' in the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Service," DA 98-468 (Mar. 9, 1998). All references herein to a party's "comments" refer to comments submitted in response to the *Public Notice* regarding the CTIA Petition, filed on or around May 8, 1998.

<sup>2</sup> *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207, *Notice of Inquiry*, 12 F.C.C.R. 17,693 (1997) (*NOI*). All references herein to a party's "*NOI* comments" or "*NOI* reply" refer to comments and replies submitted in response to the *NOI*, filed on or around December 16, 1997, or January 16, 1998, respectively.

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## DISCUSSION

### I. THERE IS NO COMPELLING NEED TO UNDERTAKE AN *NPRM* ON CPP

CTIA and the commenting parties have failed to demonstrate any compelling need for the FCC to initiate a rulemaking proceeding on CPP.<sup>3</sup> CTIA claims that in the absence of CPP, wireless services will not be an adequate substitute for wireline services.<sup>4</sup> Other commenters argue that wider availability of CPP would provide wireless customers with more flexibility and would stimulate greater demand for wireless services.<sup>5</sup> Simply put, there is a dearth of reliable evidence that CPP would accomplish these goals.<sup>6</sup> For this reason, the Commission specifically sought hard evidence and empirical studies before determining whether to adopt an intrusive regulatory scheme with regard to CPP.<sup>7</sup> The comments in response to the *NOI* and the CTIA petition are backed up by little

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<sup>3</sup> BellSouth Comments at 1-2; AT&T Comments at 1; *see* SBC Comments at 1; PageNet *NOI* Comments at 6.

<sup>4</sup> CTIA Comments at 4; Omnipoint Comments at 1-3; Vanguard Comments at i, 4-5; Sprint Spectrum Comments at 4-5.

<sup>5</sup> Bell Atlantic Mobile Comments at 2; AirTouch Comments at 1; Nextel Comments at 3.

<sup>6</sup> *See* USTA *NOI* Reply at 2 (“There is no indication in the record that mandatory CPP availability can or will enhance competition for CMRS or local exchange service.”); Sprint Spectrum *NOI* Comments at 2 (“[T]here is no direct evidence of CPP’s ability to foster competition in the United States”); GTE *NOI* Comments at 9 (“GTE does not have enough data to determine what effect, if any, CPP might have on traffic flows, subscribership, digital service, etc.”).

<sup>7</sup> *See NOI*, 12 F.C.C.R. at 11,697-99. The Commission agreed with CTIA that “there is a scarcity of hard data regarding the stimulative effect of CPP in the U.S.” *Id.* (quoting CTIA, *The Who, What and Why of “Calling Party Pays,”* at 11 (July 4, 1997) (“CTIA Report”)).

more than conjecture and analogies to unrelated markets,<sup>8</sup> and thus fail to provide a compelling basis upon which to initiate a rulemaking and adopt an intrusive and new regulatory program.<sup>9</sup>

Moreover, CTIA has not presented any public interest reason to expedite this proceeding.<sup>10</sup> To the contrary, the limited available evidence to date highlights numerous technological and implementation problems with CPP,<sup>11</sup> and reveals that the general public has manifested little or no interest in CPP at all.<sup>12</sup> In fact, although touted as a means to increase CMRS usage, CPP may depress demand for calls to wireless customers.<sup>13</sup> For example, CTIA's own report on CPP noted that some business subscribers prefer the current CMRS model to encourage customers to call them, indicating that a CPP system might curtail business opportunities.<sup>14</sup> Also, LEC customers accustomed to placing local calls at non-usage sensitive rates may simply disconnect upon hearing

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<sup>8</sup> See GTE *NOI* Comments at 10, 12; SBC *NOI* Comments at 7. Vanguard, for example, again urges reliance upon the international marketplace for insight into the benefits of a CPP option. Vanguard Comments at 5-7. As BellSouth has previously shown, however, reliance upon the international CPP model ignores very real differences between the two markets, *e.g.*, differences in network maturity, use of NXX blocks, consumer demand, wireline billing and rate structures, and technologies. BellSouth *NOI* Comments 6-7.

<sup>9</sup> See BellSouth Comments at 2-3; SBC Comments at 3-4 ("Since the Commission's whole goal in opening this proceeding was to see if encouraging CPP would stimulate competition between wireless and wireline services, and the record does not support that finding, continuing this proceeding in order to create mandatory nationwide standards for CPP would be contrary to the Commission's goal.").

<sup>10</sup> See USTA Comments at 4 ("[T]he petition fails to make any showing that 'uniform, nationwide' CPP rules would serve the public interest at all.").

<sup>11</sup> See SBC Comments at 3; USTA Comments at 2 & n.6; USTA *NOI* Reply at 2-3; BellSouth *NOI* Comments at 5-6. Some of the larger obstacles include resolving unbillable revenue leakage; enabling switches to provide recorded intercepts; and defining where, in the path of call setup, the network recognizes that CPP applies to a call. See CTIA Report at 21-24; *NOI*, 12 F.C.C.R. at 17,702-03.

<sup>12</sup> See, *e.g.*, PageNet *NOI* Reply at 2 ("Findings from some cellular CPP service offerings show that customers reacted negatively to or were uninterested in the CPP service option."); see also AT&T Comments at 4; BellSouth *NOI* Comments at 3; GTE *NOI* Comments at 8-9; Sprint Corp. *NOI* Comments at 5-6; SBC *NOI* Reply at 22.

<sup>13</sup> SBC Comments at 3; WUTC *NOI* Comments at 3.

<sup>14</sup> See BellSouth *NOI* Comments at 4 & n.11 (citing CTIA Report); USTA *NOI* Reply at 3.

a notification message.<sup>15</sup> These possible adverse consequences of CPP can be fully understood only after more testing and trials have taken place in the market.

Thus, the Commission should allow ongoing and proposed studies to be concluded, which may provide a basis for determining whether there is a demand for CPP and, if so, whether there is a compelling reason to later re-open this proceeding. AT&T's recently initiated market testing in Minnesota is but one example of a market trial already underway to assess the demand for one possible type of CPP offering.<sup>16</sup> At this nascent stage, however, neither the FCC nor industry know what form CPP will ultimately take.<sup>17</sup> The development of CPP innovations should be allowed to continue unfettered in the competitive market without the imposition of imprudent regulations governing the types of CPP offerings.<sup>18</sup>

Such a result is also compelled by the deep divisions which exist within the industry as to the extent of federal regulatory intervention necessary to ensure CPP's viability at this early stage.<sup>19</sup> Contrary to the contention of CTIA and a few others, the comments filed in this proceeding demonstrate a marked *lack* of a "general industry agreement" as to the appropriate degree of Commission involvement regarding CPP.<sup>20</sup> Accordingly, BellSouth reiterates that this uncertainty

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<sup>15</sup> SBC Comments at 3; SBC *NOI* Reply at 21; *see* Ad Hoc *NOI* Reply at 1 n.3.

<sup>16</sup> AT&T Comments at 2-4; *see* USTA Comments at 4.

<sup>17</sup> *See* AT&T Comments at 2.

<sup>18</sup> USTA Comments at 2; AT&T Comments at 2; SBC Comments at 3; MCI *NOI* Reply at 2.

<sup>19</sup> *See* BellSouth Comments at 2 & n.4.

<sup>20</sup> USTA Comments at 2 ("[T]he record in response to the NOI showed many areas of fundamental disagreement among the parties."); MCI *NOI* Reply at 1 ("The record reflects deep divisions within the wireless industry on a wide range of issues"); *see also* BellSouth Comments at 2; *compare, e.g.*, AT&T Comments at 1 ("adoption of specific rules governing CPP is premature"); SBC Comments at 1-2 ("[T]he Commission should take expedited action . . . to dismiss the proceeding, not to issue the [NPRM] . . ."); USTA Comments at 2 ("A rulemaking proceeding on any aspect of CPP is extremely premature.") *with* APCC Comments at 2 ("APCC takes no position at this time as to whether the issuance of an NPRM at this juncture is appropriate.") *and* Nextel Comments at 3 ("The Commission should release a [NPRM] . . ."); Omnipoint Comments at 1 ("[T]he Commission [should] . . . issue a [NPRM] . . . to adopt uniform, nationwide rule for CPP

counsels in favor of a deliberated, not hasty, response by the Commission and argues against the adoption of specific rules regarding CPP.<sup>21</sup>

## **II. THE MARKETPLACE, NOT REGULATION, SHOULD GUIDE CPP'S DEVELOPMENT**

As BellSouth and others have shown, the competitive marketplace will respond to consumer demand for the provision of a CPP service option,<sup>22</sup> and there has been no convincing showing that the marketplace will not be sufficient in this regard.<sup>23</sup> Parties supporting CTIA's contention that the FCC should take action to establish a CPP framework nevertheless argue that the framework should be broad and guided by the market, with regulatory interference kept to a minimum.<sup>24</sup> Others who seemingly support FCC action posit that regulatory involvement is necessary only to the extent that the marketplace is insufficient in developing CPP.<sup>25</sup> Thus, while there exists disagreement regarding the need for, or the extent of, FCC action regarding CPP, there is near unanimous consent that the marketplace should guide CPP's domestic development.

Like CPP requirements generally, consumer notification issues should also be left to industry and the marketplace to decide, and not to regulators.<sup>26</sup> As one carrier noted, CMRS providers are strongly incented to ensure that proper notification and consent procedures are established prior to

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offerings.”).

<sup>21</sup> See BellSouth Comments at 2; AT&T Comments at 1; USTA Comments at 2.

<sup>22</sup> USTA Comments at 4; RCA Comments at 2; AT&T Comments at 1-2; SBC Comments at 1-2; BellSouth Comments at 3-4; BellSouth *NOI* Reply at 2 & n.5.

<sup>23</sup> See BellSouth *NOI* Reply at 1-2. Although Omnipoint, for example, questions the adequacy of relying only on market forces to encourage the development of CPP, it does so based only on unproven conjecture. Omnipoint Comments at 3-4.

<sup>24</sup> See OPASTCO Comments at 2-3; RTG Comments at 2-3; Motorola Comments at 3; Vanguard Comments at i-ii; WUTC Comments at 2; RCA Comments at 1-2.

<sup>25</sup> See, e.g., AirTouch Comments at 2. Even CTIA has argued that the Commission should rely upon market forces to shape CPP service development. CTIA *NOI* Comments at 4.

<sup>26</sup> SBC Comments at 2-3; USTA Comments at 4-5; Page Net *NOI* Reply at 7; see BellSouth *NOI* Reply at 4 & n.16.

the implementation of CPP in order to protect their customers, reduce any confusion regarding billing, and to keep uncollectibles to a minimum.<sup>27</sup> There may be more than one effective mechanism to properly notify consumers regarding CPP charges, and these notification mechanisms should be allowed to develop based upon consumers needs and manufacturer innovations as driven by the marketplace, and not constrained by regulatory fiat.<sup>28</sup>

Some parties argue that the Commission should require LECs to bill and collect for CPP charges in order for CPP to be implemented successfully.<sup>29</sup> Such requirements would exceed what is called for by CTIA,<sup>30</sup> and are wholly unnecessary given the competitive nature of the billing and collection marketplace. More than a decade ago, the Commission deregulated LEC provision of billing and collection services in order to “enhance competition in the billing and collection market.”<sup>31</sup> As a result, clearinghouses, credit card companies, and other third parties provide competitive billing alternatives to LECs and deter anticompetitive billing and collection practices.<sup>32</sup> The existence of such competitive alternatives dictates that LEC billing is not essential to CPP’s viability, nor should it be; the viability of CPP should not be dependent upon re-regulating the competitive billing and collection marketplace.<sup>33</sup> While a LEC may choose to provide billing and

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<sup>27</sup> USTA Comments at 5.

<sup>28</sup> See USTA Comments at 5; PageNet *NOI* Reply at 7.

<sup>29</sup> See, e.g., AirTouch Comments at 3; Omnipoint Comments at 1, 5; Vanguard Comments at 9-17.

<sup>30</sup> See CTIA *NOI* Comments at 5-6 (arguing that while LECs should make available relevant data to bill for CPP, mandatory LEC billing and collection services are not required).

<sup>31</sup> *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, *Report and Order*, 102 F.C.C.2d 1150, 1170-71 (1986).

<sup>32</sup> Bell Atlantic *NOI* Comments at 8; SBC *NOI* Reply at 15-16; USTA *NOI* Comments at 7.

<sup>33</sup> See SBC *NOI* Reply at 15-17; see also AT&T *NOI* Comments at 2-3; Sprint Corp. *NOI* Comments at 2; PCIA *NOI* Comments at 13; GTE *NOI* Comments at 4, 22.

collection services for CPP, such services should not be foisted upon a LEC if it does not consider billing and collection profitable.<sup>34</sup>

Not only is mandatory billing and collection unnecessary, however, it is also contrary to the deregulatory nature of the Telecommunications Act.<sup>35</sup> Despite the contention of some parties, billing and collection is not an unbundled network element of interconnection service under Sections 251 or 272 of the Act, and thus cannot be imposed upon LECs on that basis.<sup>36</sup> The 1996 Act does not require LECs to provide billing and collection services themselves, merely “information sufficient for billing.”<sup>37</sup> Thus, CMRS providers can offer CPP using their own networks and information currently made available by incumbent LECs,<sup>38</sup> or they can contract with a third party or clearinghouse as discussed above. The choice of which billing and collection mechanism to use should be a market-based decision, and not one that is constrained by regulation. Likewise, the success or failure of CPP should not be dependent upon whether LEC billing and collection is an unbundled network element, but should be based upon market demand for the service. If mandatory LEC billing and collection is imposed, however, regulatory parity dictates that competitive LECs be subject to the same mandates imposed upon incumbent LECs.

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<sup>34</sup> See BellSouth *NOI* Reply 5 & n.18.

<sup>35</sup> *Non-Accounting Safeguards*, CC Docket No. 96-149, *Notice of Proposed Rulemaking*, 11 F.C.C.R. 18,877, 18,879 (1996) (stating that the intent of the 1996 Act is to “provide for a pro-competitive, deregulatory national policy framework”); see Bay Springs *NOI* Reply at 10; SBC *NOI* Comments at 4.

<sup>36</sup> See Bay Springs *NOI* Reply at 7-9; Bell Atlantic *NOI* Comments at 6-9; USTA *NOI* Comments at 7.

<sup>37</sup> 47 U.S.C. § 153(29); see SBC *NOI* Comments at 4-5; USTA *NOI* Comments at 7; compare Bay Springs *NOI* Reply at 7-8.

<sup>38</sup> SBC *NOI* Comments at 4.

Finally, the Commission should allow CPP market trials, such as AT&T's ongoing effort in Minnesota, to develop innovative approaches to CPP in the absence of regulatory intervention.<sup>39</sup> These and other planned and ongoing market trials will provide better information regarding customer reaction and demand for CPP offerings, as well as offer valuable insight into the effectiveness of different notification and billing and collection methods.<sup>40</sup> Such trials may also provide the Commission with some of the empirical data it sought in the *NOI* regarding possible increases in wireless usage and competition with the wireline network, issues which up to now have only been the subject of predictive judgments. Accordingly, the market should be given time to work prior to FCC involvement in the CPP arena.<sup>41</sup>

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<sup>39</sup> See USTA Comments at 3, 4. Significantly, AT&T Wireless, a member of CTIA and the wireless provider with the most developed CPP trial to date, has asked the Commission to deny CTIA's petition for expedited consideration. AT&T Comments at 1,5.

<sup>40</sup> For example, BellSouth Telecommunications is in the planning stage of developing market trials of a billing and collection service.

<sup>41</sup> See BellSouth Comments at 3; see also *AT&T May Be Climbing Over CPP Obstacles*, Mobile Phone News, Vol. 16, No. 3, June 8, 1998, at 1-2 (describing encouraging results from AT&T's CPP market trials in the absence of regulatory intervention).



## CONCLUSION

The Commission should continue to allow the marketplace, not regulation, to govern the development of CPP. Given the lack of industry consensus surrounding the implementation of CPP in this country, and the lack of empirical evidence to date, the Commission should reject CTIA's petition and close this proceeding.<sup>42</sup>

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June 8, 1998

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<sup>42</sup> See, e.g., SBC Comments at 1 (“[T]he Commission should take expedited action in this proceeding; that action, however, should be to dismiss the proceeding . . . .”); USTA Comments at 9 n.27 (“In all events, the Commission should terminate this docket.”).

## CERTIFICATE OF SERVICE

I, Brooke MacArthur Wilding, hereby certify that on this 8th day of June, 1998, copies of the foregoing "Reply Comments of BellSouth" in WT Docket No. 97-207 were served by U.S. mail on the following:

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